

received under the plan after the missing participant's death and before the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) *Lump sum payment to estate.* The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period before the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date when the lump sum is paid. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) *Time of benefit.* The PBGC will pay the survivor benefit beginning when the beneficiary is located.

(5) *Spouse deceased.* If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC will pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

§ 4050.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under this part will be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) *Limitation on benefit value.* The total actuarial present value of all benefits paid with respect to a missing participant under §§ 4050.8 through 4050.10, determined as of the deemed distribution date, will not exceed the

missing participant's designated benefit.

(c) *Guaranteed benefit.* If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 4050.8 through 4050.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC will instead pay the minimum benefit. The minimum benefit is the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trustee plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose); or

(2) The benefit based on the designated benefit that should have been paid under § 4050.5.

(d) *Limitation on annuity starting date.* A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) The required beginning date under section 401(a)(9) of the Code; or

(2) The date when the missing participant (or the survivor) is notified of his or her right to a benefit.

§ 4050.12 Special rules.

(a) *Missing participants located quickly.* Notwithstanding the provisions of §§ 4050.8 through 4050.10, if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator must make distribution to the individual in such manner as the PBGC will direct.

(b) *Qualified domestic relations orders.* Plan administrators must and the PBGC will take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of ERISA or section 414(p) of the Code into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO.

For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator must use the assumptions for a missing participant who is a beneficiary under § 4050.5(b).

(c) *Employee contributions*—(1) *Mandatory employee contributions*. Notwithstanding the provisions of § 4050.5, if a missing participant made mandatory contributions (within the meaning of section 4044(a)(2) of ERISA), the missing participant's designated benefit may not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of ERISA (whichever produces the greater amount).

(2) *Voluntary employee contributions*. (i) *Applicability*. This paragraph (c)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of ERISA) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) *Payment to PBGC*. A plan administrator, in accordance with the missing participant forms and instructions, must pay the employee contributions described in paragraph (c)(2)(i) of this section (together with any earnings thereon) to the PBGC, and must file Schedule MP with the PBGC, by the time the designated benefit is due under § 4050.6. Any such amount must be in addition to the designated benefit and must be separately identified.

(iii) *Payment by PBGC*. In addition to any other amounts paid by the PBGC under §§ 4050.8 through 4050.10, the PBGC will pay any amount paid to it under paragraph (c)(2)(ii) of this section, with interest at the designated benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 4050.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment will be made to the missing participant's estate.

(d) *Residual assets*. The PBGC will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of

this part apply to any distribution (to participants and beneficiaries who cannot be located) of residual assets remaining after the satisfaction of plan benefits (as defined in § 4041.2 of this chapter) in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the payment of residual assets for a participant or beneficiary who cannot be located, and the submission to the PBGC of the related Schedule MP (or amended Schedule MP), must be made no earlier than the date when the post-distribution certification is filed with the PBGC, and no later than the later of—

(1) The 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than those who cannot be located and for whom payment of residual assets is made to the PBGC, and

(2) The date when the post-distribution certification is filed with the PBGC.

(e) *Sufficient distress terminations*. In the case of a plan undergoing a distress termination (under section 4041(c) of ERISA) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of ERISA, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 4050.5 is limited to the title IV benefit plus any benefit to which funds under section 4022(c) of ERISA have been allocated.

(f) *Similar rules for later payments*. If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (*e.g.*, upon audit of the termination), and one or more of such individuals cannot be located, the PBGC will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part apply to such benefits.

(g) *Discretionary extensions*. Any deadline under this part may be extended in accordance with the rules described in § 4041.30 of this chapter.

(h) *Payments beginning after required beginning date*. If the PBGC begins paying an annuity under § 4050.9(a) or

4050.10(a) to a participant or a participant's spouse after the required beginning date under section 401(a)(9)(C) of the Code, the PBGC will pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on the required beginning date. The PBGC will also pay lump sum equivalents under this paragraph (g) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (g) will increase the total value of the benefits payable with respect to a missing participant.)

APPENDIX A TO PART 4050—EXAMPLES OF DESIGNATED BENEFIT DETERMINATIONS FOR MISSING PARTICIPANTS UNDER § 4050.5 IN PLANS WITH DEEMED DISTRIBUTION DATES ON AND AFTER AUGUST 17, 1998

The calculation of the designated benefit under § 4050.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of \$3,500 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is \$3,000 under plan A's assumptions. Under § 4050.5(a)(1), the plan administrator pays the PBGC \$3,000 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is \$5,200 under plan A's assumptions and \$4,700 under the missing participant lump sum assumptions. Under § 4050.5(a)(2), the plan administrator pays the PBGC \$4,700 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is \$4,900 under plan A's assumptions, \$3,600 under the missing participant lump sum assumptions, and \$4,950 under the missing participant annuity assumptions. Under § 4050.5(a)(3), the plan administrator pays the PBGC \$4,950 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of \$1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than \$5,000 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 4050.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from \$840 at age 65 (the normal retirement age) ($\$1,000 \times (1-.16)$) to \$630 at age 60 (the earliest retirement age) ($\$1,000 \times (1-5 \times (.05)) \times (1-.16)$).

(3) Under § 4050.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (*i.e.*, the benefit at age 60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is \$5.4307 if the benefit begins at age 60. (Because a new spouse may succeed to the survivor benefit, the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is \$41,056 ($12 \times \630×5.4307). The designated benefit is equal to this value plus an expense adjustment of \$300, or a total of \$41,356.

[62 FR 60440, Nov. 7, 1997, as amended at 63 FR 38306, July 16, 1998]

APPENDIX B TO PART 4050—EXAMPLES OF BENEFIT PAYMENTS FOR MISSING PARTICIPANTS UNDER §§ 4050.8 THROUGH 4050.10

The provisions of §§ 4050.8 through 4050.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was \$41,356. The unloaded designated benefit was \$41,056. As of Plan B's deemed distribution date (and

using the missing participant annuity assumptions), the present value per dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the *actual* age of M's spouse) is \$4.7405. Thus, the monthly benefit to M at age 62 is \$722 ($\$41,056 / (4.7405 \times 12)$). M's spouse will receive \$361 (50 percent of \$722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of \$361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of \$10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died on or after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55 (as permitted by the plan).

S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to \$9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in §4050.2, the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is \$2.4048 if the benefit begins when S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is \$168 (50 percent of $\$9,700 / (2.4048 \times 12)$). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of \$168, accumulated with interest at the designated benefit interest rate to the date paid.